

WATERSHED PROTECTION ORDINANCE

RUTHERFORD COUNTY

ARTICLE 100: AUTHORITY AND GENERAL REGULATIONS

Section 101. Authority and Enactment.

The Legislature of the State of North Carolina has, in Chapter 153A, Article 6, Section 121, General Ordinance Authority; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Board of Commissioners does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Rutherford County.

Section 102. Jurisdiction.

The provisions of this ordinance shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of Rutherford County, North Carolina," which is adopted simultaneously herewith. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance. This ordinance shall be permanently kept on file in the office of the County Clerk.

Section 103. Exceptions to Applicability.

(A) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this ordinance amend, modify, or restrict any provisions of the Code of Ordinances of Rutherford County; however, the adoption of this ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the county at the time of the adoption of this ordinance that may be construed to impair or reduce the effectiveness of this ordinance or to conflict with any of its provisions.

(B) It is not intended that these regulations interfere with any easement, covenants, or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards of the use of a building or land, then the provisions of these regulations shall control.

(C) Existing development, as defined in this ordinance, is not subject to the requirements of this ordinance. Expansions to structures classified as existing development must meet the requirements of this ordinance; however the built-upon area of the existing development is not required to be included in the density calculations.

(D) A pre-existing lot owned by an individual prior to the effected date of this ordinance, regardless of whether or not a vested right has been established, may be developed for single family residential purposes without being subject to the restrictions of this ordinance.

Section 104. Criminal Penalties.

Any person violating any provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS 14-4. The maximum fine for each offense shall not exceed \$500.00. Each day that the violation continues shall constitute a separate offense.

Section 105. Remedies.

(A) If any subdivision, development and/or land use is found to be in violation of this ordinance, the Board of Commissioners may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$_____, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct business, or use in or about the premises. In addition, the NC Environmental Management Commission may assess civil penalties in accordance with GS 143-215.6 (a). Each day that the violation continues shall constitute a separate offense.

(B) If the watershed administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, building, or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the watershed administrator is questioned, the aggrieved party or parties may appeal such ruling to the watershed review board.

Section 106. Severability.

Should any section or provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 107. Effective Date.

This ordinance shall take effect and be in force on (month, date and year).

ARTICLE 200: DEVELOPMENT REGULATIONS

Section 201. Establishment of Watershed Areas.

The purpose of this article is to list and describe the watershed areas herein adopted.

For purposes of this ordinance the county is hereby divided into the following areas:

WS-II-BW (Balance of Watershed)
WS-IV-CA (Critical Area)
WS-IV-PA (Protected Area)

Section 202. Watershed Areas Described.

(A) WS-II Watershed Area – Balance of Watershed (WS-II-BW). In order to maintain a predominantly undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of one dwelling unit per acre. All other residential and nonresidential development shall be allowed a maximum of twelve percent (12%) built-upon area. In addition, nonresidential uses may occupy five percent (5%) of the balance of the watershed which is outside the critical area, with a seventy percent (70%) built-upon area when approved as a special nonresidential intensity allocation (SNIA). The watershed administrator is authorized to approve SNIAs consistent with the provisions of this ordinance. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and sludge application sites are allowed.

(1) Allowed Uses:

- (a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- (c) Residential development.
- (d) Nonresidential development excluding discharging landfills and the storage of toxic and hazardous materials unless a spill containment plan is implemented.

(2) Density and Built-upon Limits:

- (a) Single Family Residential-- development shall not exceed one dwelling unit per acre on a project by project basis. No residential lot shall be less than one acre, except within an approved cluster development.
- (b) All Other Residential and Nonresidential-- development shall not exceed twelve percent (12%) built-upon area on a project by project basis except that up to five percent (5%) of the balance of the watershed may be developed for nonresidential uses to seventy percent (70%) built-upon area on a project by project bases. For the purpose calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(B) WS-IV Watershed Areas – Critical Area (WS-IV-CA). Only new development activities that require an erosion/sedimentation control plan under State law or approved local program are required to meet the provisions of this ordinance. In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre. All other residential and nonresidential development shall be allowed twenty-four percent (24%) built-upon area. New sludge application sites and landfills are specifically prohibited.

(1) Allowed Uses:

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten (10) foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission. Along all perennial waters indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1994 recommended by the Soil and Water Conservation Commission.

(b) Silviculture, subjected to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

(c) Residential.

(d) Nonresidential development, excluding: 1) the storage of toxic and hazardous materials unless a spill containment plan is implemented, 2) landfills and 3) sites for land application of sludge/residuals or petroleum contaminated soils.

(2) Density and Built-upon Limits:

(a) Single Family Residential – development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development.

(b) All Other Residential and Nonresidential – development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) WS-IV Watershed Areas – Protected Area (WS-IV-PA). Only new development activities that require an erosion/sedimentation control plan under state law or approved local government program are required to meet the provisions of this ordinance. In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and nonresidential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. A maximum of three (3) dwelling units per acre or thirty-six percent (36%) built-upon area is allowed for projects without a curb and gutter street system.

(1) Uses Allowed:

(a) Agriculture, subjected to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation, and Trade Act of 1990.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

(c) Residential development.

(d) Nonresidential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

(3) Density and Built-upon Limits:

(a) Single Family Residential – development shall not exceed two (2) dwelling units per acre, or three (3) dwelling units per acre for projects without a curb and gutter system, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre, or one-third (1/3) acre for projects without a curb and gutter system, except within an approved cluster development.

(b) All Other Residential and Non-Residential – development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For projects without a curb and gutter street system, development shall not exceed thirty-six percent (36%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

Section 203. Cluster Development.

Clustering of development is allowed in all watershed areas under the following conditions:

(A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Section 202. Built-upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

(B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

(C) The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

Section 204. Buffer Areas Required.

(A) A minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization stormwater Best Management Practices.

Section 205. Rules Governing the Interpretation of Watershed Area Boundaries.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the watershed map, the following rules shall apply:

(A) Where area boundaries are indicated as approximately following either street, alley, railroad, or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

(B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

(D) Where the watershed area boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

(E) Where other uncertainty exists, the watershed administrator shall interpret the watershed map as to location of such boundaries. This decision may be appealed to the watershed review board.

Section 206. Application of Regulations.

(A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

(B) No area required for the purpose of complying with the provisions of this ordinance shall be included in the area required for another building.

(C) Every residential building hereafter erected, moved, or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in Section 207.

(D) If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

Section 207. Existing Development.

Any existing development as defined in this ordinance may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this ordinance; however, the built-upon area of the existing development is not required to be included in the density calculations.

(A) Vacant Lots. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Rutherford County prior to the effective date of this ordinance. Lots may be used for any of the uses allowed in the watershed area in which it is located. Where the lot area is below the minimum specified in this ordinance the watershed administrator is authorized to issue a watershed protection permit.

(B) Uses of Land. This category consists of uses existing at the time of adoption of this ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

- (1) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
- (2) Such use of land shall be changed only to an allowed use.
- (3) When such use ceases for a period of at least one year, it shall not be reestablished.

(C) Reconstruction of Building or Built-upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:

- (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
- (2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

Section 208. Watershed Protection Permit.

(A) Except where a single family residence is constructed on a lot deeded prior to the effective date of this ordinance, no building or built-upon area shall be erected, moved, enlarged

or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the watershed administrator. No watershed protection permit shall be issued except in conformity with the provisions of this ordinance.

(B) Watershed protection permit applications shall be filed with the watershed administrator. The application shall include a completed application form (see Appendix A) and supporting documentation deemed necessary by the watershed administrator.

(C) Prior to issuance of a watershed protection permit, the watershed administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.

(D) A watershed protection permit shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

Section 209. Building Permit Required.

Except for a single family residence constructed on a lot deeded prior to the effective date of this ordinance, no permit required under the North Carolina State Building Code shall be issued for any activity for which a watershed protection permit is required until such permit has been issued.

Section 210. Watershed Protection Occupancy Permit.

(A) The watershed administrator shall issue a watershed protection occupancy permit certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

(B) A watershed protection occupancy permit, either for the whole or part of a building, shall be applied for coincident with the application for a watershed protection permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.

(C) When only a change in use of land or existing building occurs, the watershed administrator shall issue a watershed protection occupancy permit certifying that all requirements of this ordinance have been met coincident with the watershed protection permit.

(D) If the watershed protection occupancy permit is denied, the watershed administrator shall notify the applicant in writing stating the reasons for denial.

(E) No building or structure which has been erected, moved, or structurally altered may be occupied until the watershed administrator has approved and issued a watershed protection occupancy permit.

ARTICLE 300: PUBLIC HEALTH REGULATIONS

Section 301. Public Health, in general.

(A) No activity, situation, structure, or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate onsite sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash, or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(B) The watershed administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality. Such situations shall constitute a violation of this ordinance.

ARTICLE 400: ADMINISTRATION, ENFORCEMENT AND APPEALS

Section 401. Watershed Administrator and Duties thereof.

The county shall appoint a watershed administrator, who shall be duly sworn in. It shall be the duty of the watershed administrator to administer and enforce the provisions of this ordinance as follows:

(A) The watershed administrator shall issue watershed protection permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the administrator.

(B) The watershed administrator shall serve as clerk to the watershed review board.

(C) The watershed administrator shall keep records of all amendments to this ordinance and shall provide copies of all amendments upon adoption to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management.

(D) The watershed administrator shall keep records of the jurisdiction's utilization of the provision that a maximum of five percent (5%) of the non-critical area of the WS-II-BW watershed may be developed with non-residential development to a maximum of seventy percent (70%) built-upon surface area. Records for the watershed shall include the total acres of the watershed jurisdiction area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, acres, site plan, use, stormwater management plan as applicable and inventory of hazardous materials as applicable.

(E) The watershed administrator is granted the authority to administer and enforce the provisions of this ordinance, exercising in the fulfillment of his responsibility the full police power of the county. The watershed administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this ordinance.

(F) The watershed administrator shall keep a record of variances to this ordinance. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management on an annual basis and shall provide a description of each project receiving a variance and the reason for granting the variance.

Section 402. Appeal from the Watershed Administrator.

Any order, requirement, decision or determination made by the watershed administrator may be appealed to and decided by the watershed review board.

An appeal from a decision of the watershed administrator must be submitted to the watershed review board within thirty (30) days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the watershed administrator shall transmit to the board all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his option cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

The board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

Section 403. Changes and Amendments to the Watershed Protection Ordinance.

(A) The board of commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

(B) No action shall be taken until the proposal has been submitted to the watershed review board for review and recommendations. If no recommendation has been received from the watershed review board within forty-five (45) days after submission, the board of commissioners may proceed as though a favorable report had been received.

(C) Under no circumstances shall the board of commissioners adopt such amendments, supplements or changes that would cause this ordinance to violate the watershed protection rules as adopted by the NC Environmental Management Commission. All amendments must be filed with the NC Division of Environmental Management, NC Division of Environmental Health, and the NC Division of Community Assistance.

Section 404. Public Notice and Hearing Required.

Before adopting or amending this ordinance, the board of commissioners shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) or more than twenty-five (25) days before the date fixed for the hearing.

Section 405. Establishment of Watershed Review Board.

(A) There shall be and hereby is created the watershed review board. The Rutherford County Planning Commission shall serve as the watershed review board.

(B) Two (2) alternate members shall be appointed to serve on the watershed review board in the absence of any regular member and shall be appointed for one (1) year terms. While attending in the capacity of a regular member, the alternate shall have and exercise all the powers and duties of the absent regular member.

Section 406. Rules of Conduct for Members.

Members of the Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below:

(A) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the board

(B) No board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A board member shall have a "financial interest" in a case when a decision in the case will: 1) cause him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 per cent (10%) or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e., parent, spouse, or child).

(C) No board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the watershed administrator or any other member of the board, its secretary or clerk prior to the hearing.

(D) Members of the board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(E) Members of the board shall give notice to the chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest which he has in a particular case before the board.

(F) No board member shall vote on any matter that decides an application or appeal unless he had attended the public hearing on that application or appeal.

Section 407. Powers and Duties of the Watershed Review Board.

(A) Administrative Review. The watershed review board shall hear and decide appeals from any decision or determination made by the watershed administrator in the enforcement of this ordinance.

(B) Variances. The watershed review board shall have the power to authorize, in specific cases, minor variances from the terms of this ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(1) Applications for a variance shall be made on the proper form obtainable from the watershed administrator and shall include the following information:

(a) A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(b) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the watershed review board in considering the application.

(c) The watershed administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption whenever a variance request is filed. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the watershed administrator prior to a decision by the watershed review board. Such comments shall become a part of the record of proceedings of the watershed review board.

(2) Before the watershed review board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

(a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the board must find that the five following conditions exist:

(1) If he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the

terms of the Ordinance that will make possible the reasonable use of his property.

(2) The hardship results from the application of the ordinance to the property rather than from other factors such as deed restrictions or other hardship.

(3) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(4) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the ordinance, or who purchases the property after the effective date of the ordinance, and then comes to the board for relief.

(5) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(b) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

(c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(3) In granting the variance, the board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the propose of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

(4) The watershed review board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(5) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

(6) If the application calls for the granting of a major variance, and if the watershed review board decides in favor of granting the variance, the board shall prepare

a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- (a) The variance application;
- (b) The hearing notices;
- (c) The evidence presented;
- (d) Motions, offers of proof, objections to evidence, and rulings on them;
- (e) Proposed findings and exceptions;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

(a) If the commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The commission shall prepare a commission decision and send it to the watershed review board. If the commission approves the variance as proposed, the board shall prepare a final decision granting the proposed variance. If the commission approves the variance with conditions and stipulations, the board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(b) If the commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the commission shall deny approval of the variance as proposed. The commission shall prepare a commission decision and send it to the watershed review board. The board shall prepare a final decision denying the variance as proposed.

(C) Approval of all development greater than the low density option. See Appendix D.

Section 408. Appeals from the Watershed Review Board.

Appeals from the watershed review board must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.

ARTICLE 500: DEFINITIONS

Section 501. General Definitions.

Agricultural Use. The use of waters for stock watering, irrigation, and other farm purposes.

Animal Unit. A unit of measurement developed by the US Environmental Protection Agency that is used to compare different types of animal operations.

Best Management Practices (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Buffer. An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Building. Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building.

Built-upon area. Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), ect. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

Cluster Development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

Composting Facility. A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

Critical Area. The area adjacent to a water supply intake where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridgeline of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

Customary Home Occupations. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over twenty-five percent (25%) of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, ect.

Development. Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

Discharging Landfill. A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

Dwelling Unit. A building, or portion thereof, providing compete and permanent living facilities for one family.

Existing Development. Those projects that are built or those projects that as a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- (1) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid or local government approval to proceed with the project, or
- (2) having an outstanding valid building permit as authorized by the General Statutes (GS 153A-344.1 and GS 160A-385.1), or
- (3) having expended substantial resources (time, labor, money) and having an approve site specific or phased development plan as authorized by the General Statutes (GS 153A-344.1 and GS 160A-385.1).

Existing Lot (Lot of Record). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

Family. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provide that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

Hazardous Material. Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

Industrial Development. Any not-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

Landfill. A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the NC General Statutes. For the purpose of this ordinance this term does not include composting facilities.

Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Major Variance. A variance that results in any one or more of the following:

- (1) the complete waiver of a management requirement;
- (2) the relaxation, by factor of more than ten percent (10%) of any management requirement that takes the form of a numerical standard;

Minor Variance. A variance that does not qualify as a major variance.

Non-residential Development. All development other than residential development, agriculture and silviculture.

Plat. A map or plan of a parcel of land which is to be, or has been subdivided.

Residential Development. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, ect. And their associated outbuildings such as garages, storage buildings, gazebos, ect. and customary home occupations.

Single Family Residential. Any development where: 1) no building contains more than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit.

Street (Road). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure. Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Subdivider. Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Toxic Substance. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chain, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

Variance. A permission to develop or use property granted by the watershed review board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this ordinance.

Water Dependent Structure. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Watershed. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

Watershed Administrator. An official or designated person of Rutherford County responsible for administration and enforcement of this ordinance.

Section 502. Word Interpretation.

For the purpose of this ordinance, certain words shall be interpreted as follows:

Words in the present tense include the future tense.

Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of other wording indicates otherwise.

The word “person” includes a firm, association, corporation, trust, and company as well as an individual.

The word “structure” shall include the word “building.”

The word “lot” shall include the words, “plot,” “parcel,” or “tract.”

The word “shall” is always mandatory and not merely directory.

The word “will” is always mandatory and not merely directory.